

APPENDIX D
Programmatic Agreement

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Preserving America's Heritage

July 7, 2008

Mr. Mike Pool
State Director, California State Office
Bureau of Land Management
2800 Cottage Way, Suite W1834
Sacramento, CA 95825

Ref: Programmatic Agreement among the United State Bureau of Land Management, Ridgecrest Field Office, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation regarding the Hay Ranch Water Extraction and Delivery System

Dear Mr. Pool:

Enclosed is the executed Programmatic Agreement for the referenced program. By carrying out the terms of this Agreement, the Bureau of Land Management will have fulfilled its responsibilities under Section 106 of the National Historic Preservation Act and the Advisory Council on Historic Preservation's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act.

Should you have any questions, please contact Nancy J. Brown, who can be reached at 202-606-8582 or nbrown@achp.gov.

Sincerely,

N *Tom*

Reid Nelson
Assistant Director
Federal Property Management Section
Office of Federal Agency Programs

Enclosure

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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**PROGRAMMATIC AGREEMENT
AMONG THE UNITED STATES BUREAU OF LAND MANAGEMENT,
RIDGECREST FIELD OFFICE,
THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER, AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
THE HAY RANCH WATER EXTRACTION AND DELIVERY SYSTEM**

WHEREAS, the United States Bureau of Land Management (BLM) will issue a right-of-way (ROW) to Coso Operating Company LLC (Applicant) for the Hay Ranch Water Extraction and Delivery System (HAY RANCH) which includes the installation of a water pipeline and auxiliary facilities across federal lands (Project); and

WHEREAS, a cultural resources inventory report, entitled *Cultural Resources Inventory for the Hay Ranch Water Extraction and Delivery System, Coso Geothermal Project, Inyo County, California* [Appendix A], has been completed and effects to archaeological resources along the ROW shall be avoided. However, the implementation and operation of the proposed Project may have an effect on Coso Hot Springs (CHS), an historic property included on the National Register of Historic Places (NRHP), but the effects cannot be fully determined at the time of Project approval; and

WHEREAS, the BLM Ridgecrest Field Office is the lead BLM Office for HAY RANCH. BLM will issue the ROW and is responsible for compliance with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f; NHPA), as amended, and its implementing regulations at 36 CFR Part 800 (August 5, 2004); and

WHEREAS, BLM finds that the issuance of a ROW and Notice to Proceed to construct the HAY RANCH Project is an Undertaking as defined in 36 CFR §800.16(y) and may affect historic properties; and

WHEREAS, CHS is located on fee lands owned and administered by Naval Air Weapons Center China Lake (Navy) and effects to the CHS are monitored and managed pursuant to two agreements: (1) *Memorandum of Agreement between the Commander, Naval Weapons Center, and the Coso Ad Hoc Committee, Owens Valley Paiute-Shoshone Band of Indians (July, 1979)*, and (2) *Programmatic Memorandum of Agreement between the Commander, Naval Weapons Center, California State Historic Preservation Officer and the Advisory Council on Historic Preservation (November, 1979)* [Appendix B], and the Navy has been invited to be a Concurring Party to this PA; and

WHEREAS, pursuant to Section 101(d)(6)(B) of the NHPA, 36 CFR 800.2(c)(2)(ii), the American Indian Religious Freedom Act (42 U.S.C. 1996; AIRFA), Executive Order 13175, and Section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001-13; NAGPRA), and the Executive Memorandum of April 29, 1994 (59FR22951), BLM has consulted with the Big Pine Paiute Tribe of the Owens Valley, the Bishop Paiute Tribe, the Ft. Independence Paiute Tribe, the Lone Pine Paiute-Shoshone Tribe, the Timbisha Shoshone Tribe,

the Kern Valley Indian Community, and the Tubatulabals of Kern Valley and has invited those Tribes expressing an interest in the Undertaking to concur in this PA, with the further understanding that, notwithstanding any decision by these Tribes to decline concurrence, BLM shall continue to consult with these Tribes throughout the implementation of this PA; and

WHEREAS, in accordance with regulations at 36 CFR §800.14(b)(3) implementing §106 of the NHPA, BLM has consulted with the California State Historic Preservation Officer (hereinafter “SHPO”) per 36 CFR §800.6(a), and notified and invited the Advisory Council on Historic Preservation (hereinafter “the ACHP”) per 36 CFR §800.6(a)(1)(C) to participate in consultation to resolve the potential effects of the Undertaking on historic properties,

NOW, THEREFORE, BLM, the SHPO, and the ACHP agree that BLM, to the extent of its legal authority, shall ensure that the following stipulations of this PA are implemented to take into account the effects of the Undertaking on historic properties.

A. STIPULATIONS

BLM shall ensure that the following stipulations are carried out:

I. DEFINITIONS

The definitions provided at 36 CFR § 800.16 and in this stipulation are applicable throughout this PA.

“Area of Potential Effects” means those lands within the boundaries of a proposed ROW corridor extending from Hay-Coso Ranch to Well 88-1 of the Coso Geothermal Project. The corridor is approximately nine miles long and fifty feet wide, crossing approximately 33 acres of public lands managed by the BLM, 17 acres of lands managed by the Navy, and 7 acres of private lands. The Area of Potential Effects (APE) also includes the CHS, a property included on the National Register of Historic Places.

“Traditional Practitioner” means an indigenous person who utilizes the CHS for traditional cultural purposes.

“Concurring Parties” means invited parties, including the Navy, Tribes and the Applicant, who concur, through their signature, in this PA. Concurring parties may propose amendments to this PA.

“Signatories” means the BLM, the SHPO, and the ACHP. Signatories may propose amendments to this PA and have the exclusive authority to terminate the PA.

II. DETERMINATIONS OF ELIGIBILITY

For the purposes of this Undertaking, BLM, will assume eligibility and accepts previous National Register of Historic Places (NRHP) determinations of eligibility by consensus or through formal determination by the Keeper of the Register

III. EFFECTS ASSESSMENT

A. BLM shall condition the ROW grant to avoid archaeological properties located within the APE for the pipeline corridor. An archaeologist and Native American Monitor will be present to observe the implementation of this Undertaking. The archaeologist and Native American Monitor shall be present during construction activities to identify and/or ascertain the significance of any subsurface cultural resources or to aid in the avoidance of sensitive areas.

B. The eligibility criterion for the CHS to the NRHP is based on Native American traditional and medicinal use of the CHS. Therefore, the monitoring effort of this PA for CHS will be focused on continued use by Traditional Practitioners.

Under the *1979 Programmatic Memorandum of Agreement*, Navy is responsible for management of the CHS Monitoring Program. The monitoring program established baseline data for miscellaneous springs and wells located within the NRHP. The annual report produced by this effort summarizes monthly temperature data, water levels and chemical composition of the springs and wells. The annual report has been distributed to the Tribes, ACHP and SHPO since the program began. Under this PA, Navy will include BLM on distribution of the annual monitoring report.

Under the 1979 Memorandum of Agreement between Navy and Coso Ad Hoc Committee, Owens Valley Band of Paiute-Shoshone Indians, and the Kern Valley Indian Community, Navy is the lead agency on facilitating requests from Traditional Practitioners to the CHS. The Navy tracks Native American use of the CHS, which has averaged 3 weekend visits per year for the past 20 years. Under the terms of this PA, Navy will provide BLM, SHPO, ACHP and Tribes with an annual written summary of Native American use of the CHS for the preceding year. The BLM will assure the distribution of the annual written summary to all Consulting Parties to this PA.

If changes in use patterns by the Traditional Practitioners resulting from the implementation of this Undertaking are identified, the BLM shall coordinate with the Navy and the other Consulting Parties to this PA to develop a means for addressing effects in accordance with the *1979 Programmatic MOA*.

IV. DISCOVERIES AND UNANTICIPATED EFFECTS

A. Should the Applicant encounter a previously unknown cultural resource during the implementation of the Undertaking, or should the Applicant affect, directly or indirectly,

a known historic property in an unanticipated manner, or where the implementation of the Undertaking may affect a found component of a cultural resource which may be historic, all work within 200 feet of that find shall cease until BLM can evaluate the NRHP eligibility of the find, assess the probable character of the Undertaking's effects on it, and develop a resolution to any effect prior to resuming work. BLM shall consult with the other Signatories and Tribes throughout this process. If a previously unknown cultural resource has been determined to be damaged by the Undertaking, the resource will be assumed eligible for the National Register.

B. The design and execution of data recovery or other mitigation measures (treatment) would be done in consultation with the other Signatories and Tribes. Mitigation measures would be agreed upon among all Signatories after consultation with Tribes. In the event a dispute arises during consultation on appropriate mitigation measures, BLM shall proceed in accordance with stipulation VIII to resolve the issue.

C. Work shall cease in a 200 foot radius around human remains or funerary objects found in association with human remains that are encountered during inventory, evaluation, or treatment phase fieldwork, or during the implementation of the Undertaking. Upon the discovery and recognition of identifiable human remains, BLM shall comply with the appropriate State, County or local laws and regulations, including notifying the County Coroner or other designated official as required in California, as well as the SHPO. BLM will also notify the California Native American Heritage Commission and Tribes if the human remains are determined to be those of Native American descent. If the human remains are determined to be Native American as defined by NAGPRA (Public Law 101-601), the BLM will take responsibility for developing and executing treatment of those remains and the objects found in association with them by implementing that agency's procedures for complying with NAGPRA.

D. In the event that Native American human remains or funerary objects are found in association with such human remains on private or state lands, the Applicant shall treat the remains and objects in accordance with California Public Resources Code 5097.98.

V. NATIVE AMERICAN CONSULTATION

BLM shall consult with the Tribes and other interested parties for issues associated with the implementation of this Undertaking, and serve as the liaison and the coordinator for affairs with the Tribes for the purposes of this Undertaking. Tribal consultation will follow the provisions of the BLM 8120 Series Manual guidance [Tribal Consultation].

VI. STANDARDS

A. **PROFESSIONAL QUALIFICATIONS.** All actions prescribed by this PA that involve the identification, evaluation, analysis, recordation, treatment, monitoring, and disposition of historic properties and that involve the reporting and documentation of

such actions in the form of reports, forms or other records, shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the *Secretary of the Interior's Professional Qualifications Standards* (PQS) for archaeology, history, or architectural history, as appropriate (48 FR. 44739). However, nothing in this stipulation may be interpreted to preclude any party qualified under the terms of this paragraph from using the services of properly supervised persons who do not meet the PQS.

B. DOCUMENTATION STANDARDS. Reporting on and documenting the actions cited in paragraph A. of this stipulation shall conform to every reasonable extent with the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR. 44716-44740), as well as for California, the California Office of Historic Preservation's Preservation Planning Bulletin Number 4(a) December 1989, *Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports*

C. CURATION AND CURATION STANDARDS. To the extent permitted under §§ 5097.98. and 5097.991. of the California Public Resources Code, the materials and records resulting from the actions cited in paragraph A. of this stipulation shall be curated in accordance with 36 CFR Part 79. Where Federal lands are involved, all records and materials resulting from the actions cited in paragraph A. of this stipulation shall be curated in accordance with 36 CFR Part 79 and the provisions of the NAGPRA, 43 CFR Part 10, as applicable.

VII. AMENDMENTS TO THE AGREEMENT

A. Any party to this PA may at any time propose amendments, whereupon all parties shall consult to consider such amendments pursuant to 36 CFR §800.6(c)(7) and §800.6(c)(8). This PA may be amended only upon written agreement of the Signatories after consultation with Tribes and other interested parties.

B. Amendments to this PA shall take effect on the dates that they are fully executed by the Signatories.

C. If the PA is not amended through the above process, any Signatory to this PA may terminate the agreement in accordance with stipulation IX below.

VIII. DISPUTE RESOLUTION

A. Should any party object at any time to the manner in which the terms of this PA are implemented, the BLM will consult with the parties to resolve the objection and immediately notify all Consulting Parties. If BLM determines that such objection cannot be resolved, BLM shall request comments from Consulting Parties on the objection within 30 days, and then proceed to consult with the Consulting Parties for no more than

30 days to resolve the objection. The BLM will take any comments provided by the Consulting Parties into account.

B. If the BLM determines that the objection can be resolved within the consultation period, the BLM may authorize the disputed action to proceed in accordance with the terms of such resolution.

C. If at the end of the 30 day consultation period, the BLM determines that the objection cannot be resolved through such consultation, the BLM will forward all documentation relevant to the objection, including the BLM's proposed resolution, to the ACHP per 36 CFR §800.2(b)(2). Any comments provided by the ACHP within 30 days after its receipt of all relevant documentation will be taken into account by the BLM in reaching a final decision regarding the objection. The BLM will notify the Consulting Parties in writing of its final decision before it is made public. The BLM shall have the authority to make the final decision resolving the objection.

D. The BLM's responsibility to carry out all other actions under this PA that are not the subject of the objection will remain unchanged. The BLM may implement that portion of the Undertaking subject to objection under this stipulation after complying with subsection VIII(C) of this stipulation.

E. At any time during implementation of the terms of this PA, should an objection pertaining to the PA be raised by a member of the public, the BLM shall immediately notify all the Consulting Parties about the objection and how BLM proposes to take the objection into account. The Consulting Parties may comment on the objection to the BLM. In reaching its final decision, the BLM will take into account all comments from the parties regarding the objection. Any dispute pertaining to the NRHP eligibility of historic properties or cultural resources covered by this PA will be addressed by the BLM per 36 CFR §800.4(c)(2).

IX. TERMINATION

A. Only Signatories may terminate this PA. If this PA is not amended as provided for in Stipulation VII A and B, or if a Signatory Party proposes termination of this PA for other reasons, the Signatory proposing termination shall notify the other Consulting Parties in writing, explain the reasons for proposing termination, and consult for no more than 30 days to seek alternatives to termination.

B. Should such consultation result in an agreement on an alternative to termination, the Signatories shall proceed in accordance with that agreement.

C. Should such consultation fail, the Signatory proposing termination may terminate this Agreement by promptly notifying the other Signatories and other Consulting Parties in writing.

D. Should this PA be terminated, then the BLM shall either consult in accordance with 36 CFR §800.14(b) to develop a new PA or request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. BLM shall notify the Signatories as to the course of action it will pursue.

X. DURATION OF THIS AGREEMENT

A. Unless the PA is terminated pursuant to stipulation IX above, another agreement executed for the Undertaking supersedes it, or the Undertaking itself has been terminated, this PA will remain in full force and effect for twenty (20) years from the date of execution of this PA. This PA will terminate and have no further force or effect on the day that BLM so notifies the other Signatories and Consulting Parties to the PA or twenty (20) years from the date of execution, unless amended.

B. BLM shall coordinate a meeting of the Consulting Parties to this PA every five (5) years on or about the anniversary of the effective date of the PA, or at the request of a request of a Consulting Party, to review implementation and achieved outcomes of the terms of this PA and to determine whether amendments are needed to improve the effectiveness of this PA.

C. The terms of this PA shall be satisfactorily fulfilled within twenty (20) years following the date of execution by the Signatories. If at any time BLM determines that this requirement cannot be met, the Signatories to this PA will consult to reconsider its terms. Reconsideration may include continuation of the PA as originally executed, amendment, or termination. All parties will be consulted during any reconsideration of this PA. In the event of termination, BLM will comply with stipulation XI(D) if it determines that the Undertaking will proceed notwithstanding termination of this PA.

D. If the Undertaking has not been implemented within five (5) years following execution of this PA by the Signatories, this PA shall automatically terminate and have no further force or effect. In such event, BLM shall notify the other Signatories and Consulting Parties to this PA, in writing, and, if it chooses to continue with the Undertaking, shall reinstate review of the Undertaking in accordance with 36 CFR Part 800.

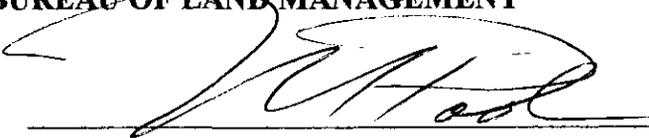
XI. EFFECTIVE DATE

This PA shall take effect on the date that it has been fully executed by the ACHP.

EXECUTION AND IMPLEMENTATION OF THIS PA is evidence that BLM has afforded the ACHP a reasonable opportunity to comment on the Undertaking and its effects on historic properties. The Signatories to this PA represent that they have the authority to sign for and bind the entities on behalf of whom they sign.

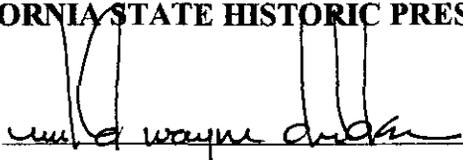
SIGNATORY PARTIES:

U.S. BUREAU OF LAND MANAGEMENT

BY:  DATE: 5/8/08

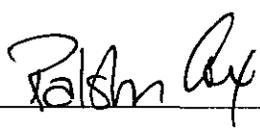
TITLE: State Director

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY:  DATE: 27 MAY 2008

TITLE: 
State Historic Preservation Officer

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY:  DATE: 7/8/08

For TITLE: Executive Director

INVITED CONCURRING PARTIES:

**BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY
BISHOP PAIUTE TRIBE
COSO OPERATING COMPANY LLC.
FT. INDEPENDENCE PAIUTE TRIBE
KERN VALLEY INDIAN COMMUNITY
LONE PINE PAIUTE-SHOSHONE INDIAN TRIBE
NAVAL AIR WEAPONS CENTER CHINA LAKE
TIMBISHA SHOSHONE TRIBE
TUBATALABALS OF KERN VALLEY**

PROGRAMMATIC AGREEMENT REGARDING THE HAY RANCH WATER EXTRACTION AND DELIVERY SYSTEM

NAVAL AIR WEAPONS CENTER CHINA LAKE

BY:  DATE: 6-5-08

TITLE: Commanding Officer

PROGRAMMATIC AGREEMENT REGARDING THE HAY RANCH WATER EXTRACTION AND DELIVERY SYSTEM

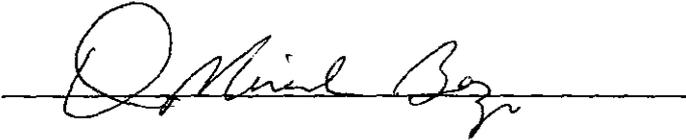
BISHOP PAIUTE TRIBE

BY  DATE: June 16, 2008

TITLE: Bishop Paiute Tribal Chairman

PROGRAMMATIC AGREEMENT REGARDING THE HAY RANCH WATER EXTRACTION AND DELIVERY SYSTEM

TUBATALABALS OF KERN VALLEY

BY:  DATE: 5/17/2008

TITLE: Tribal Chairwoman

PROGRAMMATIC AGREEMENT REGARDING THE HAY RANCH WATER EXTRACTION AND DELIVERY SYSTEM

BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY

BY: _____ DATE: _____

TITLE: _____

PROGRAMMATIC AGREEMENT REGARDING THE HAY RANCH WATER EXTRACTION AND DELIVERY SYSTEM

FT. INDEPENDENCE PAIUTE TRIBE

BY: _____ DATE: _____

TITLE: _____

PROGRAMMATIC AGREEMENT REGARDING THE HAY RANCH WATER EXTRACTION AND DELIVERY SYSTEM

TIMBISHA SHOSHONE TRIBE

BY: _____ DATE: _____

TITLE: _____

PROGRAMMATIC AGREEMENT REGARDING THE HAY RANCH WATER EXTRACTION AND DELIVERY SYSTEM

LONE PINE PAIUTE-SHOSHONE INDIAN TRIBE

BY: _____ DATE: _____

TITLE: _____

KERN VALLEY INDIAN COMMUNITY

BY: _____ DATE: _____

TITLE: _____